

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED

OCT 11 2019

Clerk, U.S. District Court
District Of Montana
Missoula

WAYNE DALE KELLBERG,

Plaintiff,

vs.

RICKY SHELBOURNE,

Defendant.

CV 19-159-M-DLC-KDL

ORDER

On October 8, 2019 United States Magistrate Judge Kathleen L. DeSoto entered her Findings and Recommendation recommending that Kellberg's Motion to Proceed in forma pauperis be denied because his Complaint is frivolous. (Doc. 3.) This is not a matter to which Kellberg is entitled to object. *Minetti v. Port of Seattle*, 152 F.3d 1113, 1114 (9th Cir. 1998). Because a party is only entitled to de novo review of those findings to which he or she specifically objects, 28 U.S.C. § 636(b)(1)(C), this Court will review for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

There is no clear error in Judge DeSoto's determination that Kellberg's Complaint is frivolous. He fails to provide any facts to support his claim, despite being familiar with the form provided to pro se litigants and having demonstrated proficiency with it in the past. (Doc. 3.)

IT IS ORDERED that Judge DeSoto's Findings and Recommendation (Doc. 3) is ADOPTED in full.

- (1) Kellberg's motion to proceed in forma pauperis is DENIED.
- (2) The Clerk of Court is directed to close the civil case if Kellberg does not pay the full filing fee of \$400.00 within 14 days of this Order.

DATED this 11th day of October, 2019.



Dana L. Christensen, Chief Judge
United States District Court